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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

T.P.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Real Party in Interest.

H046566

(Santa Clara County

Super. Ct. No. 1-17-JD-024803)

The father of C.P. petitions this court for a writ of mandate addressing the juvenile court's order that terminated his family reunification services and set a selection and implementation hearing. As substantial evidence supports the juvenile court's findings, we will uphold the termination order and deny the petition.

**I. BACKGROUND**

C.P. was transported to the hospital by ambulance upon his home delivery in October 2017. He and his mother tested positive for cocaine, and C.P. was placed in the neonatal intensive care unit. The next day C.P.'s father reported to a social worker that he had known mother for three years, he wanted to raise C.P. with mother as a family, but he did not know whether mother agreed.

C.P. was taken into protective custody after mother failed to enter inpatient treatment as a condition of informal supervision. The Santa Clara County Department of Family and Children's Services (the Department) filed a juvenile dependency petition alleging that mother's untreated substance abuse and mental health issues prevented her from safely caring for C.P., and that C.P. was at risk in father's care because father had been unable or unwilling to protect C.P. from mother's substance abuse and had failed to prepare or provide for C.P.'s care. (Welf. & Inst. Code, § 300, subd. (b); undesignated statutory references are to the Welfare and Institutions Code.) C.P. was detained at the initial hearing. Attorneys were appointed to represent mother and father who were present, and the court ordered supervised visitation for both parents twice a week, with the frequency to increase at the social worker's discretion. C.P. remained in an emergency satellite home until he was placed with foster parents in mid-January 2018.

#### **A. JURISDICTION/DISPOSITION HEARING (NOVEMBER 2017)**

At the November 27 uncontested jurisdiction and disposition hearing, the juvenile court found the allegations in the petition to be true, declared C.P. a dependent of the court, and committed him to the care and custody of the Department. According to the social worker's report, mother admitted using cocaine during and after her pregnancy to manage pain and untreated depression, and using methamphetamine during past pregnancies. She was living with three of her four other children (a fifth child had been adopted) and the eldest child's father. Also according to the report, father stated he would like to care for C.P., but his preference was that mother enter treatment with the child, and he implored the social worker to help her. He was not prepared to receive C.P. into his home at that time. He needed to buy a crib, arrange for daycare, and consult with his mother, with whom he resided. Father had visited C.P. one time in the six weeks since the child had been placed in the Department's care. In the social worker's view, father had shown no ability to care for C.P., and his focus was on C.P.'s mother rather than C.P.

The court ordered family reunification services for mother and father, neither of whom attended the hearing. Mother was ordered to attend parenting classes, psychotherapy, substance abuse treatment, and submit to weekly drug testing. Father was ordered to attend parenting classes, psychotherapy sessions to address “codependency and his role as father of the child,” and submit to on-demand drug testing at the social worker’s discretion. The court continued supervised visits for both parents.

#### **B. SIX-MONTH REVIEW HEARING (MAY 2018)**

At the six-month review hearing, the court terminated mother’s reunification services and continued services for father. Mother did not attend the hearing. According to the social worker’s report admitted in evidence, mother had visited C.P. only one time and had failed to engage in reunification services.

Father, who was present at the hearing, had missed 11 visits with C.P. and had not followed through with psychotherapy. Father failed to attend, arrived late, or cancelled several visits because he was caring for C.P.’s mother. He had reported moving to a unit in mother’s apartment complex and having regular contact with her, and he asked the social worker to visit mother at her home or the hospital. He expressed concerns about mother’s substance abuse and her inability to reunify with C.P., and concerns related to childcare and his ability to financially provide for C.P. The social worker had requested that father submit to drug testing before the supervised visits, and father either did not show up for or cancelled the visits on those days.

On the positive side, father showed willingness to participate in services. He had completed a Parent Orientation class, was waitlisted for a 12-week Nurturing Fathers class, and he was able to meet C.P.’s needs and responded to the social worker’s suggestions during their visits. The court found a substantial probability that C.P. would be placed in father’s physical custody within the next six months.

## **C. CONTESTED TWELVE-MONTH REVIEW HEARING (JANUARY 2019)**

### **The Social Worker's Report**

According to the social worker's report admitted in evidence, the social worker and father had met monthly to review his case plan progress. Father reported that he had been "couch surfing" and was in contact with mother. He was in a car accident on July 4 after leaving a friend's party, was arrested and released, underwent emergency surgery on July 5, and remained in the hospital for five days. He denied being under the influence at the time of the accident. He lost his job as a result of the accident, and was looking for work. Since June 2018 father had "consistently refused to be [drug] tested by the Department." He field-tested positive for cocaine in September 2018, but the sample was sent to the lab for confirmation and came back negative.

The social worker reported that father had missed several visits with C.P. since June 2018 because he was "sick, busy with other arrangements, or forg[ot] to confirm." Father canceled all visits as of November 28 when he obtained full-time work. Within three weeks he had been laid off and asked that the visits resume. Between June 2018 and mid-January 2019 father had missed approximately 45 of 65 visits. After some prodding by the social worker, father started psychotherapy in August. He had participated in 15 sessions, was reportedly diagnosed with major depressive disorder, and was working on stress reduction.

Father attended 9 of 12 weekly Nurturing Fathers parenting classes starting June 19, missing class on July 3, July 17, and August 21. Although father received a positive rating for course participation and had asked to make up the missed classes, he did not receive a certificate of completion and the course administrator recommended he repeat the series. The social worker's case plan checklist for September 2018 indicated that the parenting class was "done," and there is no record of the social worker instructing father to make up the classes or repeat the course.

The social worker noted father's love and care for C.P., and reported "no major concerns" regarding their visits. But the social worker recommended reunification services be terminated because father was not committed or prepared to care for C.P. without mother's involvement. The case was at its 15-month mark, and no step-down plan was in place because of father's inconsistent and irregular visits. Father's living and employment conditions remained unstable, and he had been unable to demonstrate the ability to complete court-ordered services and provide a safe structured living environment for infant C.P.

### **Father's Testimony**

Father testified that the car accident prevented him from completing the 12-week parenting class. Initially he did not want to attend psychotherapy, but he found he benefited from the sessions. He did not drug test on three occasions—once because he did not want to leave C.P. who was crying, once because the person who was going to test him did not show up, and the third time he was unable to urinate. The false positive upset him because he had not used cocaine since 2012. He was arrested on July 4, 2018 for driving under the influence but maintained his innocence.

He attributed missed visits with C.P. to the Department's inflexible scheduling. In June he missed one visit when he was sick, another when he had car trouble, another when he locked his keys in his car, and one time he no-showed without calling. He cancelled a visit in August because he received a late schedule change, and another in August he no-showed because he was running late and knew the visit would be cancelled as a result.

If C.P. were to be placed in his custody, father would "buy all that he needs," and would attend to C.P. himself. He was committed to raising C.P., and was comfortable receiving him at that time. He was in a committed relationship with a woman with whom he had been living for about four years, and she would help care for C.P. He had a

relationship with C.P.'s mother when his girlfriend visited Vietnam at the end of 2016, but they reconciled after that trip and were living together when C.P. was born.

### **Father's Girlfriend's Testimony**

Father's girlfriend testified that she and father had been in a relationship since 2014, broke up for a period in 2016 when she visited Vietnam, resumed their relationship, and had been living together continuously since January 2017. She forgave father for the pregnancy, loved C.P., and would help raise him to adulthood. She visited C.P. in the hospital once shortly after he was born, but not since then because she "was not allowed." She never reached out to the social worker about visitation, but always asked father about C.P.'s well-being.

### **Findings**

The juvenile court found that returning C.P. to father would create a substantial risk of detriment, and there was not a substantial likelihood C.P. would reunify with father within the approaching 18-month statutory deadline. The court noted that visitation remained supervised, described the 45 missed visits as problematic, and identified father's arrest and refusal to drug test as key concerns. The juvenile court found father had not made significant and consistent progress with his case plan, and it was not convinced by the testimony of father and his girlfriend that father could provide a stable environment for C.P. within 90 days. The court found that reasonable reunification services had been offered. It terminated those services and set a selection and implementation hearing under section 366.26.

## **II. DISCUSSION**

### **A. LEGAL FRAMEWORK**

If a dependent child is under the age of three on the date he or she is initially removed from the parent, the juvenile court is required to order family reunification services "for a period of 6 months from the dispositional hearing." (§ 361.5, subd. (a)(1)(B).) At the six-month review hearing, the court may continue the case to a

twelve-month permanency hearing if it finds a substantial probability that the child may be returned to a parent within another six months or that reasonable services have not been provided. (§ 366.21, subd. (e)(3).)

At the twelve-month permanency hearing, the juvenile court must determine whether returning the child to the parent “would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child,” and whether reasonable services were offered or provided to the parent to aid in overcoming the problems that lead to the Department’s removal and continued custody of the child. (§ 366.21, subd. (f).) If the court finds a substantial risk of detriment, it shall continue the matter again, but only for the remainder of the 18-month period following the child’s initial removal and only if it finds “a substantial probability that the child will be returned to the physical custody of his or her parent ... and safely maintained in the home within the extended time period” or that reasonable services have not been provided to the parent. (§ 366.21, subd. (g)(1).) Otherwise, barring exceptions not present here (§ 366.21, subd. (g)(2), (5)), the court shall terminate reunification services and order that a selection and implementation hearing be set within 120 days. (§§ 366.21, subds. (g)(4), (h); 366.26.)

“[T]o find a substantial probability that the child will be returned to the physical custody of his or her parent ... and safely maintained in the home within the extended period of time,” the court is required to find: “(A) That the parent ... has consistently and regularly contacted and visited with the child. [¶] (B) That the parent ... has made significant progress in resolving problems that led to the child’s removal from the home. [¶] (C) The parent ... has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1)(A)–(C).)

We review the juvenile court’s order terminating reunification services for substantial evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688 [no

substantial probability child will be returned within extended time period]; *In re Mario C.* (1990) 226 Cal.App.3d 599, 605 [reasonable reunification services]; see also *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75 [substantial evidence review applies even when trial court's standard of proof is clear and convincing evidence].) We review the record in the light most favorable to the juvenile court's findings, and we draw all reasonable inferences from the evidence to support the disposition. (*In re R.T* (2017) 3 Cal.5th 622, 633.) In reviewing the reasonableness of reunification services, "[t]he standard is not whether the services ... were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

## **B. FATHER'S ARGUMENTS**

Father asks us to direct the juvenile court to continue his reunification services because the social worker's report was "wrong." He contends he did not need mental health counseling or drug testing, the Department should have helped him make up the missed parenting classes, his visits with C.P. were positive, and the Department changed visitation times and cancelled visits when he started working. Even if accurate, none of his contentions provides a basis for us to grant the relief he seeks. Substantial evidence supports the juvenile court's findings that placing C.P. in father's care would create a substantial risk of detriment to C.P.'s safety, protection or well-being, and that there was not a substantial probability that C.P. would be safely maintained in father's home within the 18-month extended reunification period.

Father had been unable to meet the twice weekly visitation schedule in place for 15 months, and his track record had prevented him from transitioning to unsupervised visits. As recently as December 21, December 24, and January 9, visits were cancelled because father failed to confirm. And father's December 31 visit ended 30 minutes early at his request. He had used cocaine in the past, and on at least five occasions he did not comply with the Department's request to be drug tested. His living situation was



unstable. He had reported living with his mother when C.P. was born, then living in the same apartment complex as C.P.'s mother, then "couch surfing." He never told the social worker that he was in a committed relationship, much less that he had been living with a woman since C.P.'s birth who was interested in co-parenting C.P.

To the extent father challenges the adequacy of reunification services, the record shows that the Department identified the problems leading to father's loss of custody (his failure to protect C.P. from mother and his own ill preparedness to receive C.P.) and offered reasonable services designed to remedy those problems (supervised visitation, parenting classes, psychotherapy, and discretionary drug testing). (§ 366.21, subd. (f).) The psychotherapy and parenting classes were appropriate given father's relationship with C.P.'s mother and his inability to provide for C.P., and the record shows father largely complying with those aspects of his case plan. The drug testing was appropriate given his history. The record also shows that father's visitation schedule was reasonable and adequate under the circumstances. Because he either cancelled or showed late to visits 11 times during the first six months of dependency proceedings, the Department set up a plan where father was required to arrive early to the visitation center, and the foster parents would confirm father's presence before transporting C.P. to the visit. Father's attendance did not improve, and in September the social worker required father to confirm 1:00 p.m. visits by phone before 11:30 a.m. Finally, evidence in the record shows that visits were cancelled by father (not the Department) after he found full-time work at the end of November 2018.

We recognize the efforts father has made to reunify with C.P., but we conclude that substantial evidence supports the juvenile court's order.

### **III. DISPOSITION**

The petition for writ of mandate is denied.

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Grover, J.

**WE CONCUR:**

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Mihara, Acting P. J.

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Danner, J.

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